



Issue Date: 09 June 2004

CASE NO. 2004-ERA-20

.....
In The Matter Of:

FLORENCE STINGER,
Complainant,

v.

SCIENCE & ENGINEERING ASSOCIATES, INC.,
Respondent.
.....

**ORDER DENYING CERTIFICATION OF INTERLOCUTORY APPEAL
AND ASSIGNING CASE**

Complainant, Florence Stinger, requests that this matter be certified to the Administrative Review Board ("Board") for Interlocutory Appeal, so that the Board may review the Order issued in this matter on May 20, 2004 notifying the complainant that the attorney she retained to represent her during the investigative stage before OSHA, Attorney Edward Slavin, Jr., has been denied authority to appear in any representative capacity before the Office of Administrative Law Judges, and allowing complainant five days to notify the Office of Administrative Law Judges regarding whether she needs time to retain other counsel before proceeding with this complaint. The Order referenced *Order Denying Authority To Appear* dated March 31, 2004 issued in *In the matter of the Qualifications of Edward A. Slavin, Jr.*, 2004-MIS-2.

A request for a certification of an order for interlocutory appeal may be granted by the trial judge if he concludes that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation. *28 U.S.C. § 1292(b)*; Here, complainant has not shown that the order which she requests to have certified involves a question of law as to which there is substantial ground for difference of opinion or that an immediate appeal may materially advance the ultimate determination of the litigation. In *Judicial Watch, Inc., v. National Energy Policy Development Group*, 233 F.Supp.2d (D.D.C.2002), the court held that a party seeking certification pursuant to *§ 1292(b)* must meet a high standard to overcome the "strong congressional policy against piecemeal reviews, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals." *United States v. Nixon*, 418 U.S. at 690, 94 S.Ct. 3090. "Although courts have discretion to certify an issue for interlocutory appeal, interlocutory appeals are rarely allowed ... the movant 'bears the burden of showing that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of final judgement.' " *Virtual Def. and*

Dev. Int'l, Inc. v. Republic of Moldova, 133 *F.Supp.2d* 9, 22 (D.D.C.2001) (quoting *First Am. Corp. v. Al-Nahyan*, 948 F.Supp. 1107 (D.D.C.1996)). The "law is clear that certification under § 1292(b) is reserved for truly exceptional cases." *In re Vitamins Antitrust Litigation*, 2000 WL 673936 at *1.

The underlying issue that the complainant wants the Board to consider is the propriety of the March 31, 2004 Order denying Attorney Slavin authority to appear in a representative capacity before the Office of Administrative Law Judges. That issue is presently before the Board in *In the matter of the Qualifications of Edward A. Slavin, Jr.*, *supra*, the case in which the March 31, 2004 order of disqualification was issued. That order of disqualification continues in effect, as there was no stay or supersedeas granted by, or even requested from, the Board. The May 20, 2004 Order at issue here merely applies the March 31, 2004 Order to this case. The claimant has not shown that its application to this case involves a question of law as to which there is substantial ground for difference of opinion.

Complainant may request a stay of this proceeding pending a decision by the Administrative Review Board of the appeal by Attorney Edward A. Slavin, Jr. of the *Order Denying Authority To Appear*.

In consideration of the aforesaid, it is hereby ORDERED that:

- 1) Complainant's requests that this matter be certified to the Administrative Review Board for Interlocutory Appeal is denied; and
- 2) This matter is assigned to The Honorable Jeffrey Tureck. All future correspondence should be addressed to:

The Honorable Jeffrey Tureck
Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington DC 2001-8002

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THOMAS M. BURKE
Associate Chief Judge